

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

DAVID CAIN, JR.,

Petitioner,

v.

05-CR-360-A

ORDER

UNITED STATES OF AMERICA,

Respondent.

On January 19, 2018, the Court issued an Order holding that the Court lacked jurisdiction to consider Petitioner David Cain, Jr.'s motion to amend his § 2255 motion. See Docket No. 547. The Order, however, did not address whether the Court would issue a certificate of appealability.

The Court now clarifies that, pursuant to 28 U.S.C. § 2253(c)(1) and Rule 11(a) of the Rules Governing Section 2255 Proceedings, the Court declines to issue a certificate of appealability from its January 19, 2018 Order (Docket No. 547) because Petitioner has not made a substantial showing of the denial of a constitutional right. The Court also certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal taken from the Court's January 19, 2018 Order would not be taken in good faith.

SO ORDERED.

Dated: August 7, 2018
Buffalo, New York

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE